

AO 243 (Rev. 09/17)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>United States District Court</b>		District    MARYLAND	
Name <i>(under which you were convicted)</i> : ELIAS COSTIANES		Docket or Case No.: 0416 1:21cr00458-001	
Place of Confinement: N/A		Prisoner No.: N/A	
UNITED STATES OF AMERICA		Movant <i>(include name under which convicted)</i> V.    ELIAS COSTIANES	

**MOTION**

1. (a) Name and location of court which entered the judgment of conviction you are challenging:  
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND 101 W Lombard St, Baltimore, MD 21201
- (b) Criminal docket or case number (if you know): DKT. 0416 1:21cr00458-001
2. (a) Date of the judgment of conviction (if you know): \_\_\_\_\_
- (b) Date of sentencing: \_\_\_\_\_
3. Length of sentence: 1 Year and 1 Day
4. Nature of crime (all counts):  
18 U.S.C. § 922(g)(3)
5. (a) What was your plea? (Check one)
- (1) Not guilty ☐      (2) Guilty ☒      (3) Nolo contendere (no contest) ☐
6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?
- Plead guilty to 18 U.S.C. § 922(g)(3), 18 U.S.C. § 924(a)(c) however in the original indictment the 2nd count was 18 U.S.C. § 924(2)(a). And not guilty to 21 U.S.C. § 841(a)(1) four counts, 21 U.S.C. § 843 (b) three counts
6. If you went to trial, what kind of trial did you have? (Check one)      Jury ☐      Judge only ☐
7. Did you testify at a pretrial hearing, trial, or post-trial hearing?      Yes ☐      No ☒

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8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

- (a) Name of court: \_\_\_\_\_
- (b) Docket or case number (if you know): \_\_\_\_\_
- (c) Result: \_\_\_\_\_
- (d) Date of result (if you know): \_\_\_\_\_
- (e) Citation to the case (if you know): \_\_\_\_\_
- (f) Grounds raised: \_\_\_\_\_

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): \_\_\_\_\_
- (2) Result: \_\_\_\_\_
- (3) Date of result (if you know): \_\_\_\_\_
- (4) Citation to the case (if you know): \_\_\_\_\_
- (5) Grounds raised: \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: \_\_\_\_\_
- (2) Docket or case number (if you know): \_\_\_\_\_
- (3) Date of filing (if you know): \_\_\_\_\_

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- (4) Nature of the proceeding: \_\_\_\_\_
- (5) Grounds raised: \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket of case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**GROUND ONE:** Sixth Amendment right to the effective assistance of counsel during sentencing council failed to communicate and obfuscated the conspiracy was only approx 6 grams of cocaine, the rest was personal use.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

During the original negotiation of my plea deal with my previous attorney Mr. Michael Tomko, prior to the Honorable Judge Bredar assigning me new council Mr. Andrew Szekely and Mr. Paresh Patel I had great concern with the language in the statement of facts saying that I conspired to distribute 85 grams of cocaine. Mr. Tomko told me "a conspiracy takes two people breaking the law and even though it was for your personal use you bought it from your drug dealer and that is two people breaking the law". As a result of this and in my willingness to sign the plea I wanted clarification so it did not seem like I was some sort of drug dealer. Mr. Tomko drafted an addendum (EXHIBIT 1) that I signed and was supposed to be included in the plea but the prosecutor omitted this from the court and I never received any copies of these documents until a month after my original sentencing (EXHIBIT 2). Andy and Paresh worked extremely hard and diligently on my case but this issue went overlooked as I was unaware that Mr. Tomko had lied to me about what in fact a conspiracy is and only found out later that addendum was not included in my plea as agreed upon. A few months ago after we had decided to do a resentencing we had a conference call with a gun expert as I wanted to file something challenging my gun charge as more and more cases are being overturned post Bruen ruling. I was told that even if the Honorable Judge Bredar sided with us, the prosecutors would appeal and we would most certainly lose in the 4th district. During this call was when I initially brought up what Mr. Tomko had told me about what a "conspiracy" is, they seemed shocked and informed me that he was absolutely wrong, personal use is not conspiracy. However there were a few instances where I did in fact get some cocaine for my friends. Based on witness testimony.... (continued below)

(b) **Direct Appeal of Ground One:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

- (2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐



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(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND TWO:** Continued from above.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

as I never weighed it, but based on the grand jury testimony it seems as if it was approx 6 grams of cocaine I did sell to my friends over this entire six month period as well as two bottles of testosterone for my ex-girlfriends cousin. The balance of all the cocaine purchases were for my own personal use. Approximately 3 grams per week for 6 months totalling around 80 grams. After this conversation I became extremely uncomfortable learning that Mr. Tomko had lied to me. I told council that I did not want to go forward until this is clarified and corrected. I was told that this would take a long time and in the interum something could happen to my sister which would then make it much more difficult to be able for me to stay out of prison. I was also told repeatedly that not to worry I am not being charged with drugs I am being charged for the gun and it will not matter. I emailed Andy and Paresh (EXHIBIT 3) prior to sentencing with the original attachment that was included from Mr. Tomko that was supposed to be included in original plea. During sentencing the Honorable Judge Bredar stated that he was not worried about the gun charge but that I was out "posioning the community". He is correct, and I deeply regret my horrendous and deplorable actions which are disgraceful. However I was sentenced based on significantly altered facts and lies represented as to my usage and what was actually sold to my friends. This should have been brought to the forefront but was never mentioned and council was very aware of this. I was extremely stressed and uncomfortable and was not able to communicate these facts to the Honorable Judge Bredar myself during sentencing.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

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(2) If you did not raise this issue in your direct appeal, explain why:

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(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

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**GROUND THREE:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

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(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND FOUR:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:



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Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

(b) At the arraignment and plea:

(c) At the trial:

(d) At sentencing:

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

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18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

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\* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief:  
Resentencing based on the true and correct facts of the case.

\_\_\_\_\_  
or any other relief to which movant may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on \_\_\_\_\_  
(month, date, year)

Executed (signed) on 12/6/24 (date)

  
\_\_\_\_\_  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Elias Costas  
3201 University Ave  
Morgantown, WV 26505  
240-426-4569